



# United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge		Sitting Judge if Other than Assigned Judge	
CASE NUMBER	99 C 2785	DATE	3/12/2002
CASE TITLE	Vardon Golf Company vs. Karsten Mfg. Corp.		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

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**DOCKET ENTRY:**

- (1)  Filed motion of [ use listing in "Motion" box above.]
- (2)  Brief in support of motion due \_\_\_\_\_.
- (3)  Answer brief to motion due \_\_\_\_\_. Reply to answer brief due\_\_\_\_\_.
- (4)  Ruling/Hearing on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.
- (5)  Status hearing[held/continued to] [set for/re-set for] on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.
- (6)  Pretrial conference[held/continued to] [set for/re-set for] on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.
- (7)  Trial[set for/re-set for] on \_\_\_\_\_ at \_\_\_\_\_.
- (8)  [Bench/Jury trial] [Hearing] held/continued to \_\_\_\_\_ at \_\_\_\_\_.
- (9)  This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
  - FRCP4(m)
  - General Rule 21
  - FRCP41(a)(1)
  - FRCP41(a)(2)
- (10)  [Other docket entry] For the reasons stated in the attached Memorandum Opinion and Order, Karsten's motion for reconsideration of this court's September 7, 2001 summary judgement determination with respect to U.S. Patent 5,401,021 is granted in part and denied in part. [Doc. #152]

- (11)  [For further detail see order attached to the original minute order.]

	No notices required, advised in open court. No notices required. Notices mailed by judge's staff. Notified counsel by telephone. Docketing to mail notices. Mail AO 450 form. Copy to judge/magistrate judge.	8 <small>number of notices</small> <b>MAR 14 2002</b> <small>date docketed</small> <b>JP</b> <small>docketing deputy initials</small> <b>3-13-02</b> <small>date mailed notice</small> <b>Pam</b> <small>mailing deputy initials</small>	Document Number <b>114</b>
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**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

Vardon Golf Company, Inc., )  
Plaintiff, )  
v. ) No. 99 C 2785  
Karsten Manufacturing Corporation, )  
Defendant. ) HONORABLE DAVID H. COAR  
DOCKETED  
MAR 14 2002

**MEMORANDUM OPINION AND ORDER**

Before this court is defendant/counter-plaintiff's, Karsten Manufacturing Corporation ("Karsten") motion for reconsideration of this court's September 7, 2001 summary judgement determination with respect to U.S. Patent 5,401,021 (the "021 Patent"). For the following reasons, Karsten's motion to reconsider is granted in part and denied in part.

**Background**

On March 1, Karsten filed a "Motion for Summary Judgement of Non-Infringement and Invalidity of the '021 Patent," requesting a finding of non-infringement and invalidity of the asserted claims of the '021 Patent. On April 12, 2000, plaintiff Vardon Golf Company, Inc. ("Vardon") filed its "Response to Karsten's Motion for Summary Judgment and Cross Motion for Summary Judgement of Infringement Claim 3 of the '021 Patent." On May 16, 2000, Karsten filed its "Reply to Vardon's Response to the Motion for Summary Judgment of Non-Infringement and Invalidity of the '021 Patent." On September 7, 2000, this court issued a "Memorandum Opinion and Order" granting summary judgment on non-infringement of Claims

3,4,5, and 12 (as to both literal infringement and infringement under the doctrine of equivalents) and Claims 7 and 8 (as to literal infringement). As a result of this court's holding, only allegations of infringement under the doctrine of equivalents of Claims 7,8,14, and 15, and of literal infringement of Claims 14 and 15 of the '021 Patent remain in the case.

On November 29, 2000, and therefore subsequent to this court's ruling, the Federal Circuit issued a decision Festo Corp. v. Skoketsu Kinzoku Kogyo Kabushiki Co., 234 F.3d 558 (Fed. Cir. 2000). Karsten submits its present motion to reconsider under the auspices of the Federal Circuit's decision in Festo.

#### Standard of Review

Motions for reconsideration serve a "limited function: to correct manifest errors of law or fact or to present newly discovered evidence." Keene Corp. v. International Fidelity Ins. Co., 561 F.Supp. 656, 665-66 (N.D.Ill.1982), aff'd 736 F.2d 388 (7th Cir.1988). Accordingly, a court will entertain a motion for reconsideration only where "the Court has patently misunderstood a party, or has made a decision outside the adversarial issues presented to the Court by the parties, or has made an error not of reasoning but of apprehension." Bank of Waunakee v. Rochester Cheese Sales, Inc., 906 F.2d 1185, 1191 (7th Cir.1990) (quoting Above the Belt, Inc. v. Mel Bohannan Roofing, Inc., 99 F.R.D. 99, 101 (E.D.Va.1983)).

A further basis for a motion to reconsider would be a controlling or significant change in the law or facts since the submission of the issue to the Court. Such problems rarely arise and the motion to reconsider should be equally rare. Bank of Waunakee v. Rochester Cheese Sales, Inc., 906 F.2d 1185, 1191 (7th Cir.1990), citing Above the Belt, Inc. v. Mel Bohannan Roofing, Inc., 99 F.R.D. 99, 101 (E.D.Va.1983). A motion for reconsideration may not be used to introduce

new evidence that could have been adduced during the pendency of the summary judgment motion or as an opportunity to present new legal theories. Rothwell Cotton Co. v. Rosenthal & Co., 827 F.2d 246, 251 (7th Cir.1987), citing Keene, 561 F.Supp. at 665-66.

### Analysis

#### A. The Doctrine of Equivalents and the Festo Decision

Karsten argues that the Federal Circuit's decision in Festo materially changed the law governing and application of the doctrine of equivalents and therefore this court's September 7, 2000, decision must be reconsidered.

In the present case both parties agree that in light of Festo the doctrine of equivalents infringement is precluded for '021 Patent Claims 7-8 and 14-15. This court's accepts/agrees that the Festo decision has materially changed the law governing the doctrine of equivalents and acts to preclude doctrine of equivalents infringement for '021 Patent Claims 7-8 and 14-15.<sup>1</sup>

#### B. The Validity Issue

In addition, Karsten moves this court to reconsider its September 7, 2000, ruling on invalidity, arguing that evidence before this court allows this court to grant summary judgement in Karsten's favor. This court disagrees.

This court has repeatedly held that "motions for reconsideration served a limited function: to correct manifest errors of law or fact or to present newly discovered evidence." In this case, Karsten has not provided any evidence demonstrating that the "measurements" of the golf clubs is newly discovered. Consequently, this court cannot see any reason to reconsider its September 7, 2000 ruling as to Vardon's remaining claims of literal infringement.

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<sup>1</sup> Vardon's literal infringement claims as to Claims 14 and 15 remain.

### **Conclusion**

For the foregoing reasons, Karsten's motion for reconsideration of this court's September 7, 2001 summary judgement determination with respect to U.S. Patent 5,401,021 is granted in part and denied in part.

**Enter:**



David H. Coar  
David H. Coar  
United States District Judge

**Dated:** March 12, 2002